



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

3764
AP/ST
XDS

In re Application of

Ping Liong Tjoa

Appln. No. : 09/319,243

Filed : June 7, 1999

For : TRAINING APPARATUS

)
)
) Art Unit: 3764
)
) Ex: L. Hamilton
)
)
)

REPLY BRIEF ON APPEAL (3 COPIES) **RECEIVED**

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

AUG 20 2003
TECHNOLOGY CENTER HS/00

Sir:

Transmitted herewith are three (3) copies of a Reply Brief on Appeal in the above-identified application.

1. ☒ An Oral Hearing is requested.
2. ☐ An Oral Hearing is requested on _____.
3. ☐ An extension of time for filing the Brief on Appeal
 ☐ is hereby requested.
 ☐ was requested on _____.
4. ☐ A Verified Statement under 37 CFR 1.9 and 1.27
 ☐ is enclosed.
 ☐ is of record in this application.

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The fee is calculated as follows:

	Large Entity	Small Entity	Amount
Filing Brief on Appeal	\$310.00	\$155.00	
Request for Oral Hearing	270.00	140.00	\$140.00
Request for Extension of Time for Filing Brief			
<input type="checkbox"/> 1 month	110.00	55.00	
<input type="checkbox"/> 2 months	390.00	195.00	
<input type="checkbox"/> 3 months	890.00	445.00	
<input type="checkbox"/> 4 months	1,390.00	695.00	
<input type="checkbox"/> 5 months	1,800.00	945.00	

TOTAL DUE: :\$ 140.00

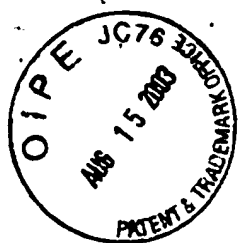
5. ☐ No fee required.
6. ☐ A check in the amount of _____ is enclosed. (Check No. _____)
7. ☒ Please charge Deposit Account No. 10-1213 in the amount of \$ 140.00. A duplicate of this sheet is enclosed.
8. ☒ The Commissioner is hereby authorized to charge payment of the following fees during the pendency of this application or credit any overpayment to Deposit Account No. 10-1213. A duplicate of this sheet is enclosed.
- ☒ Any patent application processing fees under 37 CFR 1.17.
- ☐ The Issue Fee set in 37 CFR 1.18 at or before mailing of the Notice of Allowance, pursuant to 37 CFR 1.311(b).
- ☒ Any filing fees under 37 CFR 1.16 for presentation of extra claims.

Respectfully submitted,


Felix J. D'Ambrosio
Reg. No. 25,721

August 15, 2003

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TECHNOLOGY CENTER-R3700

Sir:

Pursuant to the provisions of 37 CFR 1.193 (b)(1), applicant/appellant respectfully
submits the following reply to the Examiner's Answer of June 18, 2003.

Several comments are in order in view of the Examiner's Answer.

(1)

In discussing Bosko, the examiner states in reference to the end elements 10 and

11:

each element having a spherical form, the
diameter of which may be adapted to the
palm of the hand (col. 1, lines 40-45)...

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Applicant/appellant cannot agree with this characterization of the diameter of the
end elements 10 and 11. The referenced col and lines state:

Rubber, plastic or other suitable balls of

a dumbbell, or barbell may be of any practical size and of any convenient shape which would become advisable for all practical reasons on the device of physicians or trainers.

This statement does not, it is respectfully submitted, justify concluding that the "diameter may be adapted to the palm of the hand," as suggested by the examiner. The fact remains that users of dumbbells and barbells employ the bar between the end elements not the end elements themselves for holding the dumbbell or barbell. Why the examiner believes otherwise is not mentioned.

(2)

In further discussing Bosko, the examiner states regarding the length of the training apparatus:

---the total length of the of the training apparatus having the capacity to span the length of the shoulder span of the person using it (col 5, lines 40-45)....

Applicant/appellant cannot agree with this characterization of the length of the training apparatus. The referenced col and lines state:

Short bars and long bars can be used to change from dumbbells to barbells and should oversize containers be needed, then hollow steel balls can be used, say holding 10 gallons of liquid in each container, which would give a weight of 160 lbs.


What this statement has to do with the length of the training apparatus and whether that length is equal to the shoulder span of the user is not at all clear.

It is respectfully submitted that the examiner does not have the liberty to distort the clear language of the reference and attempt to mold it to convey a meaning that was never intended by the author of the reference. If this approach were contemplated by 35 USC 103, very little would be patentable.

(3)

In applicant/appellant's Brief, reference was made to a video which is in the possession of the examiner, along with two (2) brochures and to declarations under 37 CFR 1.132. No mention of these was made in the Examiner's Answer. Accordingly, applicant/appellant contacted the examiner by telephone and asked the examiner if any consideration was given to this evidence. Applicant/appellant was advised that consideration was given. However, no mention is made of this evidence and no indication given as to why, in an ex parte proceeding, it should not have sufficient probative value to remove Bosko as a reference resulting in the allowance of claims 12 and 14-23, Both declarants recommend the use of IDOGO (the present invention) and not dumbbells or barbells for their patients. The reason is that IDOGO is effective in treating patients (commercial success). The benefit to the patient can be directly attributed to the IDOGO. This evidence must be given its proper consideration, and if such proper consideration is given the allowance of the noted claims will, it is respectfully submitted, follow.

Respectfully submitted,



Felix J. D'Ambrosio
Reg. No. 25,721

August 15, 2003